

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	2102.04
COMPLAINT INVESTIGATOR:	Jennifer Campbell
DATE OF COMPLAINT:	March 10, 2004
DATE OF REPORT:	April 2, 2004
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	May 10, 2004

COMPLAINT ISSUES:

Whether the South Bend Community School Corporation violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically, failing to:

- a. provide two week progress reports from all teachers;
- b. provide a two day notice before tests; and
- c. provide the student with the use of a calculator.

511 IAC 7-17-7 and 511 IAC 7-18-2(a) by failing to provide the student with a free appropriate public education (FAPE) at no cost by having the parent pay for private services to allow the student to re-take failed tests per the IEP.

FINDINGS OF FACT:

1. The Student is twelve years old, in the sixth grade, and is eligible for special education and related services as a student with a learning disability.
2. The Complainant asserts that the School has failed to provide progress reports every two weeks as stated in the IEP. The November 7, 2003, and the March 9, 2004, IEPs are vague with regard to progress reports. According to the November 7, 2003, CCC notes, a conversation took place where the TOR stated that he can check grades every two weeks. The March 9, 2004, CCC notes state: "Discussed progress reports—written in for every two weeks." The IEP does not state that the Complainant is to receive progress reports every two weeks. The School acknowledges that the progress reports were mentioned in the November 6, 2003, CCC notes of the IEP, and not on the modification page; therefore the teachers did not know they were to submit progress reports.
3. According to the November 6, 2003, IEP instructional modifications/adaptations page, the Student can use a calculator/fact chart, and the Complainant states that until March of 2004, the School had not provided the Student with a calculator. The School asserts that the Student has always had access to a calculator, but the Student chooses to primarily use the fact sheet.
4. The Student's teachers implement the two-day notice before tests. The School states that teachers notify all students of tests dates verbally, on the board, in their agendas, and often with study sheets. The School asserts that it is the Student's responsibility to notify the home. Pursuant to the November 6, 2003, Instructional/Accommodations page, the Student is to receive "prior notice of tests (2 days)."

5. The Complainant states the School failed to provide an extra set of books. The IEP CCC notes from March 9, 2004, mention adding to the accommodations page an extra set of books for home and some books on tapes. Checked off on the Accommodations page check off "books on tape." The Student has not been provided any books on tape.
6. The Student stopped attending the resource room for the IEP required 45 minutes of instruction for math, English, and reading around October 15, 2004, according to the School. The CCC met on November 6, 2004, and changed the Student's IEP to general education all day and allow the Student to retake tests failed at the private tutorial service. At the March 30, 2004, CCC meeting, the CCC revised the Student's IEP and placed the Student in the resource room in order to receive special education in math and reading each day, 225 minutes each month, beginning April 12, 2004.

CONCLUSION

1. Findings of Fact #2, #3, #4, and #5 indicate the IEP is ambiguous. IEPs and case conference reports must have sufficient clarity so that both the parent and school personnel know what services a student is to receive, from whom, and whatever other resources will be employed for this endeavor. Where an ambiguity exists in the IEP, the ambiguity will be construed against the School that is responsible for its development and implementation. Therefore, a violation of 511 IAC 7-27-7(a) is found.
2. Findings of Fact #6 shows that the School failed to provide the Student a free appropriate public education by allowing the Student, per the IEP, to take retests at a private tutorial service in place of the School. Therefore, a violation of 511 IAC 7-17-7 and 7-18-2(a) is found.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The South Bend Community School Corporation shall:

Reconvene the case conference committee to:

- a. clarify and document what services the student is to receive, from whom, and resources that will be employed in this endeavor;
- b. to discuss whether to and to what extent reimburse the Complainant for the private tutorial services from November 6, 2003, to April 2004.

Submit to the Division the revised IEP and CCC notes no later than May 14, 2004.